

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
June 23, 2011

v

LINDA KAY STERMER,

Defendant-Appellant.

No. 297057
Van Buren Circuit Court
LC No. 09-016654-FC

Before: TALBOT, P.J., and GLEICHER and M. J. KELLY, JJ.

PER CURIAM.

A jury convicted defendant Linda Kay Stermer of felony murder in violation of MCL 750.316(1)(b), and the trial court sentenced her to life imprisonment without the possibility of parole. Defendant's victim was her husband of 14 years, Todd Stermer. The prosecution presented a plethora of circumstantial evidence to support its theory that defendant either sedated Todd or knocked him unconscious before dousing him with gasoline and setting him on fire. On appeal, defendant challenges her conviction on sufficiency and great weight grounds. We affirm.

The night before Todd Stermer died, he discovered that defendant was having an extramarital affair and informed defendant that he wanted a divorce. The next morning, a gas station attendant witnessed defendant filling a container with gasoline. Shortly thereafter, defendant gave her three teen-aged sons money and sent them out of the house. When the boys left, their father appeared to be sleeping in front of the television and defendant would not allow the boys into the room. Around 3:30 p.m., neighbors saw smoke billowing from the Stermer house and they drove over to assist. These neighbors witnessed defendant drive her van in reverse down the driveway, but then change gears and drive forward behind the house. When the neighbors exited their vehicle to speak to defendant, they discovered Todd's body lying alongside the driveway. They also noticed blood on the bumper of defendant's van. The medical examiner eventually determined that Todd had died from burns and smoke inhalation. Todd also had cranial lacerations consistent with blunt force trauma, various bodily injuries consistent with being run over by a vehicle, and a small amount of Vicodine in his urine. Forensics later identified the blood on defendant's van as belonging to Todd.

During the criminal investigation, defendant gave varying accounts of how she escaped the home following the fire and what she had been doing when the fire began. Defendant characterized the fire as an accident, telling investigators that Todd likely got gasoline vapors on

his clothing while repairing their furnace and those vapors likely ignited when Todd approached the fire burning in the fireplace. An arson investigator later discredited that theory. Defendant's friend, Kate Fox, also offered a damaging account of defendant's pre-offense conduct. For approximately four months, defendant had been discussing how she could get rid of her husband, including shooting him and running him over with a car. Fox had previously sent police to the Stermer house when defendant threatened to shoot Todd. Following the murder, defendant told Fox that she wanted to sneak into her now burnt-out home to retrieve a coffee mug that might contain traces of a sedative that she had planned to give to Todd. Defendant was also betrayed by a fellow prisoner who indicated that defendant admitted to drugging Todd, hitting him over the head, and then using gasoline to light him on fire.

I. CHALLENGES TO BIND OVER AND CONVICTION OF PREMEDITATED MURDER

Defendant challenges the evidentiary support for her conviction of first-degree premeditated murder in violation of MCL 750.316(1)(a). The prosecution charged defendant with two separate counts of first-degree murder: premeditated murder and felony murder based on an underlying arson. The jury convicted on both counts, but the trial court vacated the premeditated murder conviction before sentencing. Accordingly, any challenge to the premeditated murder conviction is moot and we decline to consider it. *People v Briseno*, 211 Mich App 11, 17; 535 NW2d 559 (1995) ("Where a subsequent event renders it impossible for this Court to fashion a remedy, the issue becomes moot.").

Defendant also contends that the district court lacked probable cause to bind her over for trial on the felony murder charge. Any error at the bind-over stage would be harmless given our conclusion that the prosecution presented sufficient evidence at trial to support defendant's ultimate conviction. *People v Moorer*, 246 Mich App 680; 682; 635 NW2d 47 (2001).

II. SUFFICIENCY OF THE EVIDENCE AND GREAT WEIGHT OF THE EVIDENCE

Defendant argues that the prosecution presented insufficient evidence to support her conviction for felony murder and, therefore, the trial court erred in denying her motion for a directed verdict of acquittal. Defendant also challenges the trial court's denial of her motion for new trial where her conviction was against the great weight of the evidence. We reject each challenge.

In reviewing a trial court's denial of a motion for directed verdict of acquittal, we review "the evidence in the light most favorable to the prosecution in order to 'determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt.'" *People v Gillis*, 474 Mich 105, 113, 712 NW2d 419 (2006), quoting *People v Riley (After Remand)*, 468 Mich 135, 139-140; 659 NW2d 611 (2003). The prosecution is not required to present direct evidence of a defendant's guilt. Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993).

We review the trial court's denial of defendant's motion for new trial based on the great weight of the evidence for an abuse of discretion. *People v Unger*, 278 Mich App 210, 232; 749 NW2d 272 (2008). The court should grant a new trial "only where the evidence preponderates

heavily against the verdict and a serious miscarriage of justice would otherwise result.” *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). Most motions for a new trial involve some challenge to witness credibility, *id.* at 638; however, the judge may not sit as a “thirteenth juror” to evaluate the credibility of the evidence. *Id.* at 639-640. A court may interject its opinion regarding credibility only in exceptional circumstances, such as when the “testimony contradicts indisputable physical facts and laws, . . . where a witness’s testimony is so inherently implausible that it could not be believed by a reasonable juror, . . . or where the witnesses [sic] testimony has been seriously impeached and the case marked by uncertainties and discrepancies.” *Id.* at 643-644 (internal quotations and citations omitted). If one of these exceptional circumstances exists, the judge then must consider whether the jury convicted an innocent person or if “‘it would be a manifest injustice’ to allow the guilty verdict to stand.” *Id.* at 644 (internal citation omitted).

Here, defendant was convicted of felony murder based on the underlying offense of arson. To convict a defendant of felony murder, the prosecution must present evidence to establish the following elements beyond a reasonable doubt:

(1) the killing of a human being, (2) with the intent to kill, to do great bodily harm, or to create a very high risk of death or great bodily harm with knowledge that death or great bodily harm was the probable result i.e., malice, (3) while committing, attempting to commit, or assisting in the commission of any of the felonies specifically enumerated in [MCL 750.316, including arson]. [*People v Carines*, 460 Mich 750, 758-759; 597 NW2d 130 (1999).]

To establish the underlying arson offense, the prosecution must prove that the defendant “wilfully or maliciously burn[ed] any dwelling house, either occupied or unoccupied, or the contents thereof” MCL 750.72.

In arson cases, the trier of fact usually draws inferences from circumstantial evidence: “There is rarely direct evidence of the actual lighting of a fire by an arsonist; rather, the evidence of arson is usually circumstantial.” [*People v Nowack*, 462 Mich 392, 402; 614 NW2d 78 (2000), quoting *Fox v State*, 179 Ind App 267, 277; 384 NE2d 1159 (1979).]

The crux of defendant’s appellate argument is that the evidence supports a more likely conclusion than her guilt; it establishes that Todd actually started the fire, either intentionally or accidentally. However, defendant misses the point of a jury trial: the jury heard the evidence both for and against defendant and determined that the evidence against defendant was more credible. The evidence against defendant does not “contradict[] indisputable physical facts or law,” is not “so inherently implausible” as to defy all reasonable belief, and was not so “seriously impeached” that the verdict must be overturned. *Lemmon*, 456 Mich at 643-644. Accordingly, neither the trial court nor this Court may “disturb the jury findings” regarding the credibility of the evidence even if our judicial “judgment might incline [us] the other way. *Id.* at 644.

The prosecution in this case presented significant evidence at trial that defendant had motive and opportunity to commit the charged offense and presented sufficient circumstantial evidence to connect defendant to the commission of the crime. The prosecution presented evidence that defendant had been having an affair and wanted to leave her husband for her

boyfriend. Defendant made several comments to a friend indicating that she would rather kill Todd than divorce him. Defendant purchased a container of gasoline on the morning of the murder and later denied it. Defendant sent her children out for the day and would not allow them to see their father before they left. Todd suffered head injuries consistent with being hit with a blunt object and his urine sample tested positive for Vicodine. The clothing that Todd had been wearing at the time of the fire smelled strongly of gasoline and proved to be saturated with gas. Defendant drove over Todd in the driveway after he escaped the fire, a fact from which the jury could infer that defendant wanted to finish the job. Defendant showed a consciousness of guilt by telling varying tales of how she escaped the burning home. She also told a friend that she needed to return to the home to retrieve incriminating evidence (a coffee cup that may have contained traces of a sedative). Finally, defendant confessed her crimes to a fellow jail inmate.

The prosecution also presented evidence that the fire was set intentionally, not accidentally. The fire was fast moving and quite destructive, suggesting that someone used an accelerant to start it. The arson investigator opined that the point of origin for the fire was the center of the living room where Todd lay on a recliner. Further, the investigator opined that Todd was the source point of the fire given the presence of gasoline on his sweatpants and underwear.

Relying on the “doctrine of chances,” defendant contended that Todd’s involvement in two prior house fires rendered it likely that he had started the fire that took his life. The doctrine of chances holds that “when someone suffers a specific type of accident with extraordinary frequency, it is objectively probable that one or more of the incidents were not accidents.” *People v Mardlin*, 487 Mich 609, 635; 790 NW2d 607 (2010). Despite defendant’s presentation of evidence supporting this theory, the jury convicted her of felony murder, suggesting that it found this theory implausible.

We conclude that the prosecution presented sufficient circumstantial evidence to prove beyond a reasonable doubt the elements of felony murder based on arson. Further, the trial court properly declined to interfere with the jury’s decision regarding the credibility of the evidence and, therefore, properly denied defendant’s motion for a new trial.

Affirmed.

/s/ Michael J. Talbot
/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly